

Notices of Proposed Rulemaking

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Jack Confer
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Phoenix, AZ 85007
Telephone: (602) 542-8155
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E-mail: jack.confer@optometry.az.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Board is amending 4 A.A.C. 21 to update its rules by addressing licensing and regulatory changes modified by Laws 2001, Chapter 331 and Laws 2003, Chapter 5. Specifically, the rules are amended to accurately reflect optometric standards and practices, current Board policy, consistency with state statutes, and rulemaking format and style requirements. In addition, this rulemaking will update language and terminology used in the rules to improve consistency and clarity. Anticipated changes include:

- A. Delegating licensing and regulation duties to Executive Director.
- B. Clarifying endorsement and regular application processes.
- C. Modifying license renewal process and prorated renewal fees.
- D. Updating approval of continuing education programs.
- E. Clarifying licensee record retention.
- F. Technical corrections.
- G. Defining new terminology

Some definitions are amended and new definitions are added in R4-21-101 so that intended audiences may use the rules effectively and consistently. R4-21-102 is repealed because it duplicates statute. R4-21-103 is amended to allow proration of licensing fees and establish new late fees, verification fees and receipt fees. R4-21-201, through R4-21-204 are amended to reflect statutory changes and current licensing and renewal practices. R4-21-206 and R4-21-207 are being amended to comply with statutory changes to certificates of special qualification. R4-21-208 updates continuing education requirement to current standards and new statute. R4-21-209 is rewritten for clarity and conformance with current board policy. R4-21-210 is amended and clarified. R4-21-301 through R4-21-303 is amended to conform to statutory changes and rule writing style requirements. R4-21-304 and R4-21-305 are amended to conform to current state regulatory practices, statutory changes and style. R4-21-306 is amended to accurately reflect the current industry practice. R4-21-307 is repealed. R4-21-308 is amended to reflect current statute. Article 4 is repealed to reflect current statutes. Article 5 is added to define Executive Director duties.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely in its evaluation of or justification for the proposed rule, where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The rulemaking impacts applicants, licensed optometrists, consumers seeking treatment, patients of licensed optometrists, continuing medical education providers, and the Board.

Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule.

The overall economic impact of the rulemaking is expected to be moderate with the benefits outweighing the costs. The retention of requirements already in rule should have little or no direct impact. New requirements for approval of continuing education approval should have a minimal impact as they allow better access to more quality programs.

The approximately 870 licensees currently licensed in the state will be affected by the rules. A licensee will bear no additional costs to their fees with the exception of those not renewing on time.

The Board will bear moderate costs to implement the change mandated by statute with certificates of special qualification as there is a mandate to notice the pharmacy industry.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Jack Confer

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10. The time, place and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Monday, November 29, 2004. An oral proceeding is scheduled for:

Date: November 30, 2004
Time: 9:00 a.m.
Location: 1400 W. Washington St., B-1 Conference Room
Phoenix, AZ 85007

A person may request information about the oral proceeding by contacting the person listed above.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS

Section	
R4-21-101.	Definitions
R4-21-102.	Meetings Repealed
R4-21-103.	Fees

ARTICLE 2. LICENSING PROVISIONS

Section	
R4-21-201.	Licensure
R4-21-202.	License Examination and Appeal
R4-21-203.	Time-frames for Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval
R4-21-204.	License Renewal
R4-21-205.	Course of Study Approval
R4-21-206.	Pharmaceutical Agent Certificate of Special Qualification
R4-21-207.	Submission of Fee; Issuance and Display of License; Surrender of License
R4-21-208.	Continuing Education Requirements; Program Criteria and Procedures
R4-21-209.	Discretionary Exemption
R4-21-210.	Equipment and Supplies
Table 1.	Time-frames (in calendar days)

ARTICLE 3. REGULATORY PROVISIONS

Section	
R4-21-301.	Styles of Optometric Practice; Staff Responsibility

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- R4-21-302. False Advertising
- R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements
- R4-21-304. Vision Examination Standards; Records
- R4-21-305. Prescription Standards; Release to Patients
- R4-21-306. Low Vision Rehabilitation and Vision Therapy
- R4-21-307. Subpoenas Repealed
- R4-21-308. Rehearing or Review of Administrative Decision

ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES Repealed

Section

- ~~R4-21-401. Agency Record; Directory of Substantive Policy Statements Repealed~~
- ~~R4-21-402. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact Repealed~~
- ~~R4-21-403. Public Comments Repealed~~
- ~~R4-21-404. Oral Proceedings Repealed~~
- ~~R4-21-405. Petition for Delayed Effective Date Repealed~~
- ~~R4-21-406. Written Criticism of Rule Repealed~~

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

Section

- R4-21-501. Issuing Licenses
- R4-21-502. Denial of License
- R4-21-503. Issuing Subpoenas
- R4-21-504. Continuing Education Approval

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

In addition to the definitions established in A.R.S. § 32-1701, the following terms apply to this Chapter:

1. "ACOE" means the Accreditation Council on Optometric Education
- ~~1-2. "Accredited" means that an educational institution is officially approved by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, or the American Optometric Association Council on Optometric Education to offer courses in optometry. "ACOE accreditation" means programs that have attained accredited status; meet the ACOE standards of educational effectiveness; and show a demonstrated commitment to quality assessment and improvement.~~
2. "Application" means forms, documents, and additional information the Board requires to be submitted by an individual who requests licensure.
3. "Applicant" means an individual who has applied for a license to practice optometry in the state of Arizona pursuant to A.R.S. §§ 32-1721 and 32-1722, but has not yet been granted such licensure.
- ~~3-4. "Board" means the state board of optometry Arizona State Board of Optometry.~~
- ~~4-5. "Certificate of special limited qualification" means a document that specifies that the holder can practice optometry as defined in A.R.S. § 32-1728 (1), (2) or (3) allows the holder to practice in a specific area of optometry specified in A.R.S. § 32-1728.~~
6. "Correspondence Course" means continuing education instructed by video, audio, online, digital, scientific journals and periodicals or any other media as approved by the board.
- ~~5-7. "Incompetence" means: lack of professional skill, fidelity, physical or mental fitness, or disparate treatment in performing the practice of optometry.~~
 - ~~a. Lack of professional skill or fidelity in performing the practice of optometry;~~
 - ~~b. Treatment in a manner contrary to accepted optometric practices; or~~
 - ~~c. Lack of physical or mental fitness to discharge professional duties.~~
8. "Negligence" means conduct which falls below the standard of care for the protection of others against unreasonable risk of harm; it is a departure from the conduct expected of a reasonably prudent licensee under like circumstances.
- ~~6. "Licensure by examination" means an applicant meets the examination requirements of A.R.S. § 32-1724.~~
- ~~7. "Licensure by reciprocity" means an applicant satisfies all of the requirements of A.R.S. § 32-1723.~~
- ~~8-9. "Low vision rehabilitation" means evaluation, diagnosis, management, and treatment of a limited vision, including the prescribing of corrective spectacles, contact lenses, prisms, or filters; or the employment of any means for the~~

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- adaptation of lenses.
9. ~~"National Board" means the National Board of Examiners in Optometry.~~
10. ~~"National Board Exam" means the optometry examination administered by the National Board.~~
11. 10. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance, or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa. Pharmaceutical and pharmaceutical agents include the following categories:
- "TPA" (topical pharmaceutical agent) means an externally applied medicine used to diagnose, treat, and manage disease of the eye and its adnexa;
 - "Oral pharmaceutical" means an ingested ~~medicine~~ medication used to diagnose, treat and manage disease of the eye and its adnexa; and
 - "Anti-anaphylactic agent" means an intramuscular dose of epinephrine used for the emergency treatment of allergic reactions and delivered by a self-injecting syringe.
11. "Practice Management" means the study of management of the affairs of optometric practice.
12. "Vision therapy" means an individualized course of treatment and education ~~program~~ prescribed ~~and~~ to improve ~~or~~ ~~rehabilitate~~ conditions ~~such as strabismus or amblyopia of the human eye or adnexa.~~ Vision therapy is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two 2 eyes. Vision therapy ~~it includes, but is not limited to:~~ ~~may include~~ ~~prescribing of corrective spectacles; contact lenses; prisms; filters; or the employment of any means for the adaptation of lenses; optical, non-optical, electronic or other treatments.~~
13. "Vision Rehabilitation" means the development of an individual plan specifying clinical therapy and instruction in compensatory approaches.

R4-21-102. Meetings Repealed

~~The Board shall conduct meetings at least 6 times each year at times and places designated by the Board of the Governor.~~

R4-21-103. Fees

- A. In addition to fees established by A.R.S. § 32-1727, the Board shall charge license fees as follows:
- License issuance fee: ~~\$200 in even numbered years and \$400 in odd numbered years.~~ of \$400 that may be prorated from date of issuance to date of renewal.
 - Biennial license renewal fee: ~~of \$400; that may be prorated to the licensee's renewal date.~~
 - Late renewal fee of \$200.
- B. A person requesting public records shall pay the following fees for searches and copies of Board records under A.R.S. §§ 39-121.01 or 39-121.03:
- Noncommercial copy:
 - 5¢ per name and address for directory listings or 15¢ each if printed on labels, and
 - 25¢ per page for other records.
 - Commercial copy:
 - 25¢ per name and address for directory listings or 35¢ each if printed on labels, and
 - 50¢ per page for other records.
 - Record searches: \$25 per hour, with a minimum charge of \$10 ~~(this fee shall be waived for other government agencies); and~~
 - Fees shall be waived for other government agencies
 - ~~4-5.~~ Pamphlets containing optometry statutes and rules: \$5.
 - Written or certified license verifications: \$10.
 - Duplicate or replacement renewal receipts: \$10.
- C. An applicant for registration or biennial registration renewal as a nonresident contact lens dispenser shall pay to the Board a registration fee of \$500.

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure

- A. A person applying for licensure shall submit the following information on a licensure application form provided by the Board ~~not later than 30 days before the date of an examination~~ at least five days prior to the date of the Board designated jurisprudence exam:
- The applicant's full name and social security number;
 - The applicant's place and date of birth;
 - The applicant's current mailing address;
 - The applicant's residence addresses for the past ~~10~~ 5 years;
 - The applicant's educational background;
 - The applicant's previous optometric experience;

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- ~~7. The applicant's previous optical experience;~~
 - ~~8-7. The applicant's work experience or occupation for the past ~~10~~ 5 years;~~
 - ~~9-8. A list of the applicant's previous state board examinations;~~
 - ~~10-9. A list of the states in which the applicant is or has been licensed and, if a license is no longer valid, the reasons why;~~
 - ~~11-10. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state;~~
 - ~~12-11. Whether the applicant has ever been refused an optometric license or renewal in any state;~~
 - ~~13-12. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board, or equivalent;~~
 - ~~14-13. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent;~~
 - ~~15-14. Whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country;~~
 - ~~16-15. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;~~
 - ~~17-16. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;~~
 - ~~18-17. The applicant shall submit a complete explanation of the details ~~if~~ if the answer to any of the questions in subsections (A)(11) (A)(12) through (A)(17) (A)(16) is affirmative, a complete explanation of the details, including dates;~~
 - ~~19. The character reference letter from 3 professional or businesspersons, unrelated to the applicant, who have known the applicant for at least the past 3 years;~~
 - ~~20-18. A sworn statement sworn under oath by the applicant verifying the truthfulness of the information provided, by the applicant; and~~
 - ~~21-19. A 2" by 3" two-inch by three-inch passport style photograph of the applicant taken within the past ~~6~~ six months of the applicant showing head and shoulders.~~
- B. In addition to the requirements of subsection (A), an applicant for licensure shall submit; ~~or arrange to have submitted:~~
1. A completed Arizona Department of Public Safety fingerprint card accompanied by a separate nonrefundable fee in the form of a cashier's check, certified check, or money order in an amount determined by and payable to the Arizona Department of Public Safety ~~for the procurement of background information;~~
 2. The ~~\$150 filing application fee~~ fees required ~~authorized by~~ pursuant to A.R.S. § 32-1727;
 3. Evidence of the successful completion of an approved course of study ~~prescribed by~~ pursuant to A.R.S. § 32-1722(A)(3). Acceptable evidence includes:
 - a. An official transcript showing that the applicant has passed the required optometry course or courses; ~~if the applicant graduated from a school of optometry on or after August 6, 1999, or~~
 - b. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed; ~~if the applicant graduated from a school of optometry before August 6, 1999.~~
 4. An official transcript received directly from the accredited institution from which the applicant graduated with a degree in optometry. ~~The transcript need not be filed with the application, but shall be received by the Board at least 10 days before the applicant's examination date.~~
- C. An applicant for licensure by reciprocity endorsement shall submit to the Board all of the information required by subsections (A) and (B) not later than 60 days before the date of the licensing examination, together with the following additional materials: the following information at least five days prior to the date of the Board designated jurisprudence exam.
1. A State Certification form provided by the Board, completed by the agency responsible for licensing optometrists in the state from which the applicant is seeking reciprocity; A license verification from all states in which the endorsement applicant has practiced in the last five years that provides the following information:
 - a. Confirmation that the state accords similar reciprocity privileges to optometrists licensed in Arizona;
 1. current status of the license;
 - b. Confirmation that the applicant has been engaged in the practice of optometry in or under the authority of that state for at least 4 of the 5 years preceding the date of the application;
 2. scope of practice;
 - e. Explanation of the basis for and result of any disciplinary action taken against the applicant within the preceding 10 years, including censure, probation, suspension, or revocation of the applicant's license;
 3. date of licensure, license number, whether or not any disciplinary action has been taken, whether or not there are any complaints on file, whether or not there are any pending investigations.
 - d. Description of any pending investigations or complaints regarding the applicant;
 - e. Statement that the applicant is in good standing to practice optometry in that state;
 - f. Statement whether the applicant is known to have been licensed to practice optometry in any other state and, if so, the name of that state; and
 - g. a certified copy of the applicant's license from the board of registration in the profession of optometry in the state where the applicant was licensed.
 2. The applicant's sworn and notarized statement on a form provided by the Board that affirms that the applicant satis-

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fies each of the requirements of A.R.S. § 32-1723(A)(3), (A)(4), and (A)(6).

~~D.~~ The Board shall permit an applicant to take an examination only if the applicant completes an application and files transcripts before the deadlines.

D. Review and approval of regular and endorsement applications: The Board may approve a regular or endorsement application based upon any combination of education or experience as specified in A.R.S. §§ 32-1722 and 1723.

R4-21-202. License Examination and Appeal

A. ~~An applicant~~ All applicants for licensure shall take a written state law exam and must receive a score of at least 76% a written and practical examination:

1. ~~No later than the 1st Board meeting of a calendar year, the Board shall announce for that calendar year that the Board shall either:~~
 - a. ~~Under A.R.S. § 32-1724, administer a written examination to applicants, or~~
 - b. ~~Accept documentation that an applicant has passed Board designated parts of the written examination administered by the National Board and designate the parts of the exam that must be passed.~~
2. ~~If the Board administers a written examination, the Board shall grade each written examination subject separately, and calculate an overall average of the subjects separately from any practical exam score. All written questions remain the property of the Board and applicants shall return them to the Board at the end of the examination.~~
3. ~~An applicant for licensure shall complete a practical examination. The practical examination may include clinical procedures and written responses to questions about slides of eye conditions. The Board may require an applicant to examine a patient as part of the practical examination. An applicant shall supply any hand-held instruments or equipment needed for use in the patient examination.~~

B. ~~An applicant who fails either the Jurisprudence written or practical portion of the examination may retake the exam one time within six months from the date of the original exam, and applies for re-examination in a subsequent year. An applicant who fails the Jurisprudence exam a second time may reapply for licensure within one year from the date of the original application shall retake the entire examination given in the re-examination year. An applicant for re-examination shall pay the regular examination fee.~~

~~C.~~ An applicant who fails the Board's written examination, practical examination, or both may appeal the Board's score determinations as follows:

1. ~~Within 60 days of license denial, the applicant or the applicant's attorney may make an appointment to examine the applicant's most recent examination answers in the Board's office during regular business hours, for a total time of 2 hours. The applicant may take notes and shall provide a copy of the notes to the Board to retain and review to protect the integrity of the examination. Dissemination of confidential testing material is grounds for license denial.~~
2. ~~An applicant shall file an original and 7 copies of a petition for review within 60 days after the licensing examination scores are mailed by the Board. The applicant shall type or print the petition that shall contain:~~
 - a. ~~A specific statement of grading errors,~~
 - b. ~~Supporting evidence, and~~
 - c. ~~The signature of the applicant or the applicant's attorney.~~
3. ~~If the Board affirms the original test score, the applicant may request a hearing on the license denial pursuant to the provisions of A.R.S. Title 41, Chapter 6, Article 6 and 10.~~

R4-21-203. Time-frames for Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval

A. For each type of license, ~~renewal of license~~, certificate, ~~or~~ approval or renewal issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.

B. For each type of license, ~~renewal of license~~, certificate, ~~or~~ approval or renewal issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application.

1. If the application is not administratively complete, the Board shall send a deficiency notice to an applicant. The deficiency notice shall:
 - a. ~~state~~ State each deficiency and the information needed to complete the application and documents;
 - b. Require the applicant to respond to the deficiencies ~~Within within~~ the time provided in Table 1 ~~for response to the deficiency notice~~, beginning on the mailing date of the deficiency notice;
 - c. ~~Require the applicant shall to submit the missing information specified in the deficiency notice to the Board within the specified time frame.~~
2. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
- 2.3. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- 3.4. If the applicant fails to respond timely and completely to the deficiency notice, the Board shall send a written notice

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to the applicant informing the applicant that the Board considers the application withdrawn. ~~Under A.R.S. § 32-1727(b), fees are nonrefundable except as provided in A.R.S. § 41-1077(A).~~

5. Pursuant to the provisions of A.R.S. § 41-1075 (B), an applicant may request an extension of the overall time-frame to satisfy the deficiency notice.
- C. For each type of license, ~~renewal of license~~, certificate, or approval ~~or renewal~~ issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date as prescribed in subsection (D); ~~depending on the manner in which the Board transmits the written notice of administrative completeness to the applicant.~~
1. During the substantive review time-frame, the Board may make ~~+ one~~ comprehensive written request for additional information. The applicant shall submit to the Board the requested additional information within the time provided in Table 1. ~~for response to a comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time frame for the Board to finish the substantive review is suspended from the date calculated as prescribed in subsection (D), until the Board receives the requested additional information.~~
 2. If, under A.R.S. § 32-1722(C), the Board determines that a hearing ~~under A.R.S. § 32-1722(C)~~ is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
 3. The Board shall issue a written notice of denial of license, ~~renewal of license~~, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter.
 4. ~~The Board shall issue a written notice informing the applicant that the Board considers the application withdrawn if the applicant does not submit the requested additional information within the time frame in Table 1 unless the applicant requests formal denial in writing within 20 days of the written notice. Under A.R.S. § 32-1727(B), fees are non-refundable except as provided in A.R.S. § 41-1077(A).~~
 - 5-4. If the applicant meets all of the substantive criteria required by statute and this Chapter for licensure, ~~renewal of license~~, certificate, or approval, the Board shall notify the applicant that the qualifications for licensure have been met and the license shall be issued as specified in R4-21-207 after receipt of the license issuance fee.
- D. ~~In computing any A~~ period of time as prescribed in this Section; ~~the Board shall not include the day of the initial act, event, or default after which the designated period of time begins to run. The time period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the time-frame period is included unless it is falls on a Saturday, Sunday, or a state holiday in which case, the time period shall end on the first following business day; in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a state holiday. The computation includes intermediate Saturdays, Sundays, and holidays. The time period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date.~~

R4-21-204. License Renewal

- A. ~~A license renewal~~ An applicant shall, ~~before august 31 of the biennial license renewal year, submit the renewal fee and the following information to the Board; on a renewal form provided by the Board:~~
1. Any change in the applicant's mailing or residential address;
 2. A list of all ~~practice~~ permanent and temporary practice addresses and phone numbers;
 3. A list of continuing education courses and if requested, proof of attendance and course completion at 32 hours of Board approved courses and programs in continuing education; pursuant to R4-21-208.
 4. ~~The state where the applicant currently practices and the date when the practice commenced;~~
 5. ~~Whether the applicant is retired from the practice of optometry;~~
 4. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state;
 5. Whether the applicant has ever been refused an optometric license or renewal in any state;
 6. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board, or equivalent;
 7. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent;
 - 6-8. Whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country;
 9. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;
 10. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
 11. Whether the applicant has ever been sued for malpractice.
 12. Whether the applicant has ever had their ability to prescribe, dispense or administer medication limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency.
 13. The applicant shall submit a complete explanation of the details if the answer to any of the questions in subsections (A)(4) through (A)(12) is affirmative;.
 6. ~~Whether the applicant has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country, and if so, an explanation; and~~

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5. ~~Whether the applicant is addicted to narcotic substances or do you presently habitually abuse alcohol?~~

~~7-14.~~A statement verifying the truthfulness of the information provided.

B. All certificates held by an applicant remain in effect upon license renewal.

C. A license is void if applicant does not submit a completed renewal application and specified renewal fee ~~before August 31 of the year the license expires~~ within four months from the date of expiration.

R4-21-205. Course of Study Approval

A. Any accredited educational institution may apply to the Board for approval of a course of study covering didactic education, pharmacology, and clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its adnexa, and prescribing, dispensing, and administering pharmaceutical agents. The institution's authorized representative shall provide the following information on the application:

1. The name and address of the accredited educational institution;
2. Certification that the course of study is equivalent in scope and content to courses provided to current graduates of the accredited educational institution;
3. The names and qualifications of proposed faculty and staff;
4. A ~~120-hour~~ course outline that includes:
 - a. Didactic pharmacology and clinical training in the diagnosis and treatment of:
 - i. Anterior segment disease;
 - ii. Posterior segment disease;
 - iii. Glaucoma; and
 - iv. Systemic diseases and emergencies with all pharmaceutical agents and the specific agents listed in A.R.S. § 32-1706(A), (B), (C), and (E).
 - b. A minimum of 12 hours of pharmacologic principles in the side effects, adverse reactions, drug interactions, use of systemic antibiotics, analgesics, antipyretics, antihistamines, over-the-counter medications, and medications and procedures to counter the affect of adverse reactions.

B. An accredited educational institution that offers an approved course of study shall grant a certificate of completion or its equivalent for the course of study when a student obtains a score of at least 75% on a closed book, proctored, written examination covering prescribing, dispensing, and administering pharmaceutical agents, and is commensurate with courses of study taken by current doctoral candidates in colleges of optometry.

R4-21-206. Pharmaceutical Agent Certificate of Special Qualification

A. ~~An optometrist who is licensed on September 13, 2000 may apply for a pharmaceutical agent certificate of special qualification to prescribe, dispense, and administer pharmaceutical agents. Optometrists licensed after September 13, 2000 must have the education, training, and experience to practice pursuant to A.R.S. § 32-1706.~~

~~1-B.~~ If the ~~optometrist licensee~~ does not currently hold a ~~TPA~~ any certificate of special qualification ~~issued before August 6, 1999, the optometrist shall:~~ Board may grant a licensee the authority to prescribe, administer and dispense pharmaceutical agents pursuant to A.R.S. § 32-1706 if all the following requirements are met:

- a. Take a course of study that meets the requirements of R4-21-205(A);
 - b. Provide the Board with a copy of current CPR certification; ~~and~~
 - c. ~~Request the National Board or the issuing educational institution to send the Board documentation showing the optometrist passed the National Board's Treatment and Management of Ocular Disease examination or other examination approved by the Board after July 17, 1993.~~
2. ~~If the optometrist holds a TPA certificate of special qualification issued before August 6, 1999, the optometrist shall:~~
- a. ~~Request that the issuing educational institution send the Board a certificate of completion showing the optometrist passed a Board approved course meeting the criteria specified in R4-21-205 (A)(4)(b), and~~
 - b. ~~Provide the Board with a copy of current CPR certification.~~
3. ~~If the optometrist graduated after August 6, 1999 and is licensed by the Board, the optometrist shall provide the Board with a copy of current CPR certification.~~

~~B-C.~~ Prior to July 1, 2000, licensees not holding a TPA or DPA certificate of special qualification shall not prescribe the use of any drugs pursuant to A.R.S. 32-1728 (A)(1). A certificate of non-pharmaceutical authority will be issued to the licensee.

~~B-D.~~ ~~An optometrist A licensee~~ who is denied certification by the Board may appeal the decision by filing a written request with the Board within 30 days following receipt of the notice of denial or disapproval. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.

R4-21-207. Submission of Fee; Issuance and Display of License; Surrender of License

~~A.~~ An applicant shall submit the license issuance fee established in R4-21-103 to the Board within 20 days following notification by the Board that the applicant has met the qualifications for licensure. The Board shall issue a license at the next Board meeting following receipt of payment.

~~B-A.~~ License display. ~~An optometrist A licensee~~ shall conspicuously display:

1. ~~An optometry license or a Board issued duplicate at all places where the optometrist is registered to practice optome-~~

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try, and

~~2-1. The appropriate Board-issued pharmaceutical agent certificate of limited qualification or wall license at each location, if the licensee holds a grandfathered certificate of special qualification issued prior to September 2000.~~

C. ~~An optometrist~~ A licensee shall surrender to the Board all licenses, certificates, and duplicates upon disciplinary order of the Board.

R4-21-208. Continuing Education Requirements; Program Criteria and Procedures

~~A. All continuing education courses or programs approved by the Board are based on the following:~~

- ~~1. The education has optometric application;~~
- ~~2. The education is available to all optometrists and students of optometry;~~
- ~~3. The instructor has expertise in the field in which the instructor is teaching;~~
- ~~4. The learning objectives are reasonably and clearly stated;~~
- ~~5. The teaching methods are appropriate and clearly stated; and~~
- ~~6. Documentation of attendance is provided to those attending.~~

~~A. A licensee shall complete 32 hours of continuing education per biennial license period. The continuing education hours shall consist of:~~

- ~~1. At least 4 hours must be in the area of diagnosis, treatment, and management of disease of the human eye and adnexa and pharmaceutical use appropriate to the authority held by the licensee.~~
- ~~2. Not more than 12 hours shall be by correspondence courses identified as self instructed continuing education.~~
- ~~3. Not more than 4 hours shall be practice management.~~
- ~~4. A Licensee may claim one credit hour of continuing education for each day of instruction or presenting in a full-time approved program, or for a less than full-time training on a pro-rata basis.~~
- ~~5. A licensee shall not carry-over hours accumulated from any previous renewal period.~~
- ~~6. Any courses prior to graduation may not be used as credit towards the Continuing Education requirements.~~
- ~~7. A licensee who is first licensed within the 12 months immediately preceding the annual renewal date may have pro-rated continuing education hours.~~

~~B. An optometrist may receive continuing education credit for the following:~~

- ~~1. Participating in an internship, residency, or fellowship at a teaching institution approved by the Association of Schools & Colleges of Optometry, Accreditation Council on Optometric Education, National Board of Examiners in Optometry, and the American Optometric Association.~~
- ~~2. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of Optometry, that is provided by an organization or institution accredited by the association of schools & colleges of optometry or the accreditation council on optometric education or approved by the Council on Optometric Practitioner Education, National, Regional or Local Optometric associations.~~
- ~~3. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of Optometry. The licensee may receive one credit hour for each hour preparing, writing, and presenting materials: one time maximum of 4-5 hours per renewal period.~~
 - ~~(a) Actually published or presented; and~~
 - ~~(b) After the date of publication or presentation.~~

~~B.C. An optometrist~~ A licensee may apply to the Board for approval of continuing education, not otherwise authorized, by submitting to the Board 45 days before the date the course or program is offered, an application including a description of the program content, instructors and their qualifications, sponsor of the program, if any, conditions of availability, and time and place offered.

~~C. Correspondence courses may include written, computer, and on-line education courses, but not more than 6 hours of correspondence courses may be used for license renewal.~~

~~D. Not more than 4 hours of practice management and administration continuing education may be used for license renewal.~~

~~E. An Optomerist shall not carry-over hours accumulated in any 1 biennial license period to a subsequent license period.~~

~~D. Except for those licensees who are not authorized to prescribe pharmaceutical agents, not less than 4 hours shall be on the subject of use, prescription and dispensing of pharmaceutical agents.~~

R4-21-209. Discretionary Exemption

~~A. In emergency situations or circumstances involving extreme hardship to an optometrist, the~~ The Board may, at its discretion and for good cause shown, reduce the number of hours of continuing education required or grant an extension of time for completion of all or part of the continuing education requirement for a particular biennial licensure period at the written request of the licensee. An extension may be granted for a licensee who has suffered a serious or disabling illness which prevented the licensee from complying with the requirements of this Section during the 12 months immediately preceding the license renewal date.

~~B. At least 90 days prior to the date of license renewal, a licensee who desires a reduction or extension to complete continuing education shall submit documentation to the Board of the emergency situation or circumstances involving extreme~~

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hardship that prevent the licensee from complying with the continuing education requirement in R4-21-208.

R4-21-210. Equipment and Supplies

A. ~~An optometrist shall maintain the following equipment and supplies in the treatment room to counteract an anaphylactic reaction:~~

1. ~~A telephone with access to an emergency medical number;~~
2. ~~Auto injectors of epinephrine, and~~
3. ~~Oral diphenhydramine hydrochloride (Benadryl).~~

B. ~~A.~~ Except for a licensed Diagnostic Pharmaceutical Agent, an optometrist A licensee shall maintain use the following uniform prescription form when prescribing, administering or dispensing a pharmaceutical agent.

TPA # _____ PA # _____	Doctor's Name Doctor's Address City, State, Zip Code Telephone Number Fax Number	License # _____ DEA # _____ (Optional)
Name _____ Date: _____ Address: _____ Rx: _____		
Disp: Sig: Refill _____ Times		
<div style="display: flex; justify-content: space-between;"> Dispense as Written _____ Substitution Permissible _____ </div>		

Table 1. Time-frames (in calendar days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial Licensure by Examination A.R.S. § 32-1722	90	30	20	60	20
Initial Licensure by Reciprocity <u>Endorsement</u> R4-21-201	120	60	20	60	20
Renewal of License R4-21-204	90	60	20	30	20
Board Approved Course of Study R4-21-205	180	90	20	90	20

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Certificates of Special Qualification R4-21-206	120	60	20	60	20
Continuing Education Program Approval R4-21-208	120	60	20	60	20
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. § 32-1773	120	60	20	60	20

ARTICLE 3. REGULATORY PROVISIONS

R4-21-301. Styles of Optometric Practice; Staff Responsibility

- A. ~~An optometrist~~ A licensee shall practice the profession of optometry only as a sole practitioner, a partner with other optometrists, licensees, an employee of an optometrist, a licensee, or an optometric professional corporation. In any of these styles of practice, ~~an optometrist~~ a licensee may practice as an independent contractor and shall practice only under the name, which may include a trade name, by which the ~~optometrist~~ licensee is registered with the Board.
- B. ~~An optometrist and particularly an optometrist~~ A licensee practicing the profession of optometry as an independent contractor shall:
1. Be solely responsible for patient examination, diagnosis and treatment; and for the procedures used for scheduling and recordkeeping; and
 2. Conduct the practice of optometry free of any control by a person not licensed to practice the profession of optometry.
- ~~C. 3. An optometrist shall ensure~~ Ensure that the ~~optometrist's~~ licensee's staff complies with the requirements of the laws and rules of Arizona that govern the practice of optometry.

R4-21-302. False Advertising

- A. ~~An optometrist~~ A licensee shall not make, publish, or use an advertisement, printed, oral, or otherwise, that contains any false, fraudulent, deceptive, or misleading representations concerning ophthalmic goods or optometric services, or the manner of their sale or distribution.
- B. ~~An optometrist~~ A licensee shall only advertise as a specialist if the ~~optometrist~~ licensee has been certified by the American Academy of Optometry as a diplomat in that specialty or as a fellow in the College of Optometrists in Vision Development. ~~An optometrist~~ A licensee may advertise that the ~~optometrist~~ licensee has a practice limited in some way, provided that the ~~optometrist~~ licensee shall not use the term specialist or any derivative of that term.
- C. ~~An optometrist~~ A licensee shall have knowledge of and be professionally responsible for the contents of any advertisement or directory that includes the name and address of the ~~optometrist~~ licensee.

R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements

- A. An advertisement for or by a licensee ~~An optometrist~~ offering ophthalmic goods or optometric goods or services for a stated price or discount shall clearly indicate in the spoken word or in type size equivalent to the address line within the advertisement:
1. ~~If for spectacle lenses or contact lenses whether~~ Whether spectacle lenses or contact lenses they are single vision, multi-focal, or other;
 2. Whether the price includes the frame and lenses for spectacles;
 3. Whether the price includes an eye examination;
 4. Whether the price for contact lenses includes all dispensing fees, follow-up care, a contact lens accessory kit, and, if an accessory kit is included, the specific features of the kit;
 5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
 6. The applicable refund policy if refunds are advertised; and
 7. If applicable, a statement that other restrictions apply.
- B. ~~An optometrist~~ A licensee shall inform a patient of the ~~optometrist fee policy~~ all professional fees prior to providing treatment.
- C. ~~An optometrist~~ A licensee who refers a patient to a facility in which the ~~optometrist~~ licensee or a member of the ~~optometrist's~~ licensee's family has an ownership or employment interest shall advise the patient at the time of the referral.
- D. ~~An optometrist~~ A licensee who charges a patient a fee for a warranty, or service or ophthalmic goods replacement agreement, shall give the patient a written copy of the warranty, or service or ophthalmic goods replacement agreement, that explains the coverage and any limitations. ~~An optometrist~~ A licensee shall document the transaction by making a written entry on the patient's records, ~~or and~~ by placing a copy of the warranty, or service or ophthalmic goods replacement agreement.

ment, signed by the patient; in the patient's records.

R4-21-304. Vision Examination Standards; Records

~~A. An optometrist shall conduct eye examinations in accordance with the standards of care established by the following American Optometric Association practice guidelines which are incorporated by this reference and on file with the Secretary of State. The materials incorporated contain no later editions or amendments:~~

- ~~1. Comprehensive Adult Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~2. Pediatric Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~3. Care of the Patient with Diabetes Mellitus, September 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~4. Care of the Patient with Amblyopia, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~5. Care of the Patient with Primary Angle Closure Glaucoma, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~6. Care of the Patient with Age-Related Macular Degeneration, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~7. Care of the Patient with Anterior Uveitis, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~8. Care of the Adult Patient with Cataract, March 20, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~9. Care of the Patient with Open Angle Glaucoma, May 28, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~10. Care of the Patient with Ocular Surface Disease, June 5, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~11. Care of the Patient with Conjunctivitis, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~12. Care of the Patient with Strabismus: Esotropia and Exotropia, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~13. Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~14. Care of the Patient with Low Vision, June 11, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~15. Care of the Patient with Myopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~16. Care of the Patient with Hyperopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~
- ~~17. Care of the Patient with Presbyopia, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and~~
- ~~18. Care of the Patient with Accommodative and Vergence Dysfunction, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;~~

A. An optometrist shall conduct all eye examinations in accordance with the current standard of care.

B. An ~~optometrist~~ A licensee shall establish and maintain a complete and legible record of each examination including all findings. The Board shall consider an illegible record to be an incomplete examination. ~~An optometrist~~ A licensee shall ensure that a patient record reflects the name of the person who makes each entry and is maintained for at least ~~10~~ 7 years after the last contact with a patient. The patient record shall include:

1. Complete case history;
2. Visual acuity of each eye: entering, and best corrected;
3. Ocular health examination;
4. Assessment of intraocular and extra-ocular muscle function;
5. Objective or subjective refraction of the eyes;
6. Diagnosis, treatment, and disposition;
7. The type and dosage of each use of a pharmaceutical agent used;
8. Any final prescription given; and
9. Any corrective procedure program prescribed.

C. ~~An optometrist~~ A licensee who discontinues practice for any reason shall arrange for patient records to be available to a patient for ~~10~~ 7 years and shall notify the Board of the permanent location of patient records from that practice before discontinuing practice. ~~An optometrist~~ A licensee who acquires or succeeds to a practice or patient records of ~~an optometrist~~

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another licensee who has discontinued practice shall maintain the records or make arrangements for the records to be available to a patient for ~~10~~ 7 years after the practice was discontinued.

- D. ~~An optometrist~~ A licensee shall, upon written request of a patient, transmit a copy of the patient's requested records within five business days, to any designated person. The ~~optometrist licensee~~ may charge a fee to cover clerical and mailing costs. The ~~optometrist licensee~~ shall maintain a record of the transfer for ~~10~~ 7 years from the date of the transfer.
- E. Any record required to be maintained by a licensee may be maintained in an electronic format provided that:
1. The electronic record accurately reflects the information prescribed in the record after the record was first generated in its final form as an electronic record or otherwise.
 2. The electronic record remains accessible for later reference.

R4-21-305. Prescription Standards; Release to Patients

- A. ~~An optometrist~~ A licensee shall not charge a patient a fee in addition to the examination fee as a condition for release of the patient's prescription. An optometric prescription shall include:
1. For ophthalmic lenses other than contact lenses:
 - a. The refractive power of the lenses;
 - b. The interpupillary distance;
 - c. The printed name of the ~~optometrist licensee~~, the location of the office, and the signature of the ~~optometrist licensee~~, and
 - d. The date of the examination and the expiration date of the prescription.
 2. For contact lenses:
 - a. If a patient who has not completed a trial period appropriate under the circumstances desires to have a prescription, the prescription need only contain the information required for ~~ophthalmic lenses other than contact lenses; the patient to purchase the trial lenses at another optical establishment or location.~~
 - b. If a patient has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to accurately reproduce the contact lenses;
 - c. The printed name of the licensee, the location of the office, and the signature of the licensee;
 - d. The date of the examination, the expiration date of the prescription, and the number of lenses that can be dispensed prior to the expiration date.
 3. For ~~topical~~ pharmaceutical agents:
 - a. The date of issuance;
 - b. The name and address of the patient;
 - c. The name, strength, and quantity;
 - d. The directions for use;
 - e. The name and address of the prescribing ~~optometrist licensee~~;
 - f. The written signature of the prescribing ~~optometrist licensee~~;
 - g. ~~The topical pharmaceutical agent certificate~~ DEA number of the prescribing ~~optometrist licensee~~; and
 - h. Two adjacent signature lines, under the left of which are the printed words "dispense as written", and under the right, the printed words "substitution permissible";
 4. A prescription may include any additional information the ~~optometrist licensee~~ considers necessary.
- B. ~~An optometrist~~ A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that prescriptions are filled accurately.
- C. ~~An optometrist~~ A licensee shall be available to verify that a prescription written by the ~~optometrist licensee~~ but filled by another provider of ophthalmic goods has been accurately filled. The ~~optometrist licensee~~ may charge a fee for verification of the accuracy or quality of ophthalmic goods dispensed by another provider.

R4-21-306. Low Vision Rehabilitation and Vision Therapy

~~An optometrist~~ A licensee may employ any objective or subjective means or methods other than surgery, to diagnose or treat with ~~topical~~ pharmaceutical agents any visual, muscular, neurological, or anatomical anomaly of the eye. The ~~optometrist licensee~~ may use any instrument or device to train the visual system or correct any abnormal condition of the eye, including the use of low vision rehabilitation and vision therapy.

R4-21-307. Subpoenas Repealed

~~The Board shall approve all summons and subpoenas issued by the Secretary or the Executive Director of the Board in connection with Board investigations or disciplinary proceedings pursuant to Title 32, Chapter 21.~~

R4-21-308. Rehearing or Review of Administrative Decision

- ~~A.~~ Except as provided in subsection (G), any party in a contested case or appealable agency action before the Board who is aggrieved by a decision rendered by the Board may file a written motion for rehearing of the decision with the Board not later than 30 days after service of the decision. The motion shall specify the particular grounds for the rehearing. For purposes of this subsection, a decision is served when personally delivered or mailed by certified mail to a party at the party's

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last known residence or place of business.

~~B.~~ A party may amend a motion for rehearing under this Section at any time before it is ruled upon by the Board. A response may be filed within 10 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may permit oral argument.

~~C.A.~~ Pursuant to A.R.S. Title 41, Chapter 6, Article 10 Uniform Administrative Appeals Procedures, The the Board may upon written request, reconsider grant a rehearing or review of the decision for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Board, hearing officer, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board, hearing officer, or prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Material evidence, newly discovered, that with reasonable diligence could not have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring in the course of an administrative hearing;
7. ~~That the~~ The decision is not justified by the evidence or is contrary to law.

~~D.B.~~ The Board may affirm or modify the decision or grant a rehearing to reconsider all or any of the parties and on all or part of the or issues for any of the reasons in subsection (C) (A). An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters.

~~E.C.~~ Not later than 30 days after the Board issues a decision, the The Board may on its own initiative, within 30 days, review or order a rehearing of reconsider its decision, for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the Board order granting the rehearing shall specify the grounds therefore.

~~F.~~ When a motion for rehearing is based upon affidavits, a party making the motion shall serve the affidavits with the motion. Within 10 days after service an opposing party may serve opposing affidavits. The Board may extend the 10 day period an additional 10 days, for good cause or upon written stipulation of the parties. The Board may permit reply affidavits.

~~G.D.~~ If the Board makes a specific finding in a decision that the immediate effectiveness of the decision is necessary for the preservation of the public peace, health, or safety and that a rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing. If a Board decision is issued as a final decision without an opportunity for rehearing, a party seeking judicial review of the decision shall make application to the superior court within the time limits permitted for application for judicial review of the Board's final decision.

~~H.E.~~ The terms "contested case and party" have the same meaning as in A.R.S. Title 41, Chapter 6.

ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES REPEALED

R4-21-401. Agency Record; Directory of Substantive Policy Statements Repealed

The official rulemaking record and directory of substantive policy statements is located in the office of the Board and may be reviewed any week day, 8:00 a.m. until 5:00 p.m., except state holidays.

R4-21-402. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact Repealed

A petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033 or to object to a rule in accordance with A.R.S. § 41-1056.01 shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the petitioner;
2. For the adoption of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the citation for the applicable Arizona Administrative Code citation number and rule title. The request shall include the specific language of the current rule, with any language to be deleted shall be stricken through but legible, and any new language shall be underlined;
4. For the repeal of a current rule, Arizona Administrative Code the citation for the applicable A.A.C. number and title of the rule proposed for repeal;
5. The reasons a rule should be adopted, amended, or repealed, and if in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
 - a. Any statistical data or other justification, with clear reference to an attached exhibit;
 - b. An identification of what persons or segment of the public would be affected and how they would be affected;

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- and
- e. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or as written comments offered by the public;
- 6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reasons the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board;
- 7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence that:
 - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule; or
 - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
- 8. The signature of the person submitting the petition.

R4-21-403. Public Comments Repealed

- A.** On or before the date of the close of record, a person may comment upon a rule proposed by the Board by submitting written comments on the proposed rule or upon any other matter noticed for public comment in the Arizona Administrative Register to the Board.
- B.** The Board considers a written comment submitted on the date it is received by the Board, except if a comment is mailed the date of receipt shall be the postmarked date.
- C.** The Board shall consider all written comments that conform with A.R.S. § 41-1023.

R4-21-404. Oral Proceedings Repealed

- A.** A person requesting oral proceedings, as prescribed in A.R.S. § 41-1023(C), shall:
 - 1. File the request with the Board;
 - 2. Include the name and current address of the person making the request; and
 - 3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice was published.
- B.** The Board shall record an oral proceeding either electronically or stenographically, and any cassette tapes, transcripts, registers, and written comments received shall become part of the official record.
- C.** The presiding officer shall utilize the following guidelines to conduct oral proceedings:
 - 1. Registration of attendees. Registration of attendees shall be voluntary;
 - 2. Registration of persons intending to speak. Registration information shall include the registrant's name, representative capacity, if applicable, a notation of the registrant's position with regard to the proposed rule and the approximate length of time the registrant wishes to speak;
 - 3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time, and purpose of the proceeding, and present the agenda;
 - 4. A statement by Board representative. The Board representative shall explain the background and general content of the proposed rules;
 - 5. A public oral comment period. The presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition; and
 - 6. Closing remarks. The presiding officer shall announce the location where the written public comments are to be sent.

R4-21-405. Petition for Delayed Effective Date Repealed

- A.** A person wanting to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the Board. The petition shall contain:
 - 1. The name and current address of the person submitting the petition;
 - 2. Identification of the proposed rule;
 - 3. The need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date; and
 - 4. The signature of the person submitting the petition.
- B.** The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

R4-21-406. Written Criticism of Rule Repealed

- A.** Any person may file a written criticism of an existing rule with the Board.
- B.** The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise improper.
- C.** The Board shall acknowledge receipt of any criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

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R4-21-501. Issuing Licenses

- A.** The executive director or the Board's designee may approve an application to practice the profession of optometry and issue a license if all of the requirements for licensure have been met and are evidenced with the application.
- B.** The executive director, or the Board's designee, shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of applications approved.

R4-21-502. Denial of License

- A.** The executive director, or the Board's designee, may deny a license to a regular or endorsement applicant who does not meet minimum requirements for licensure.
- B.** The executive director, or the Board's designee, shall provide to the Board at each regularly scheduled Board meeting a list of the optometrists whose applications were denied.

R4-21-503. Issuing Subpoenas

- A.** The executive director, or the Board's designee, may issue a subpoena for the attendance of witnesses and the production of books, records, documents any other evidence relevant to an investigation or hearing.
- B.** The executive director or the Board's designee shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of subpoenas issued.

R4-21-504. Continuing Education Approval

- A.** The executive director, or the Board's designee may approve submitted continuing education programs.
- B.** The executive director, or the Board's designee, shall provide to the Board at each regularly scheduled Board meeting a list of approved continuing education programs.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

PREAMBLE

- | | |
|------------------------------------------------|------------------------------------------|
| <u>1. Section Affected</u>
R15-5-154 | <u>Rulemaking Action</u>
Amend |
|------------------------------------------------|------------------------------------------|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rule is implementing (specific):**
Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. § 42-5061
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 4202, October 3, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|------------------------------------------------------------------------------------------------------------|
| Name: | Hsin Pai, Tax Analyst |
| Address: | Tax Policy and Research Division
Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007 |
| Telephone: | (602) 716-6851 |
| Fax: | (602) 716-7995 |
| E-mail: | paih@revenue.state.az.us |
- Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at www.revenue.state.az.us/tra/draftdoc.htm.
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The agency is amending the rules to clarify guidelines regarding the imposition of transaction privilege tax on retail businesses that offer services performed in connection with and related to their sales of computer hardware or computer software. The changes amend and remove rule language that is ambiguous, outmoded, or otherwise imprecise in explaining the Department's position to affected taxpayers.

Notices of Proposed Rulemaking

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Because the amendments resolve ambiguities that have been a source of confusion for some taxpayers in the course of their tax compliance efforts, the Department expects some economic impact to result from adoption of the amended rule. Because the amendments clarify and more accurately explain the scope and nature of the imposition of or exemptions from transaction privilege tax for the aforementioned types of business activities, a minimal impact may occur for those vendors due to increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Hsin Pai, Tax Analyst
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6851
Fax: (602) 716-7995
E-mail: paih@revenue.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: Monday, November 22, 2004
Time: 9:00 a.m.
Location: Department of Revenue
B1 Level Conference Room
1600 W. Monroe
Phoenix, AZ 85007

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

R15-5-154. ~~Data Processing Equipment~~ Computer Hardware and Software

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-154. ~~Data Processing Equipment~~ Computer Hardware and Software

Notices of Proposed Rulemaking

- A. ~~Income~~ Gross receipts derived from services rendered in whole or in part in connection with the sale of ~~data processing equipment~~ computer hardware is exempt, including ~~income~~ gross receipts derived from charges imposed for professional and technological services such as analysis, design, support engineering services, classroom instruction, and data conversion services.
- B. ~~Income from the multiple use of data processing equipment where no single customer has exclusive use of the equipment for a fixed period of time, or where the customer does not exclusively control all manual operations necessary to operate the equipment is nontaxable service income.~~
- ~~C.~~ ~~B.~~ Except as provided in subsection ~~(D)~~ (C), the gross receipts derived from the sale of ~~electronic data processing computer software~~ programs are taxable, regardless of the method that a retail business uses to transfer the programs to its customers.
- ~~D.~~ ~~C.~~ The gross receipts derived from charges imposed for the following business activities originate from nontaxable service activities and are therefore not taxable:
1. ~~The original creation of an electronic data processing program for the specific use of an individual customer.~~
 2. ~~or the The modification of a ~~earned~~ electronic data processing prewritten computer software program for the specific use of an individual customer are nontaxable service activities, if the charge for the modification is shown separately on the sales invoice and records.~~
- E. When income is received from both the sale of tangible personal property and exempt services, the charges for each shall be separately stated on billings and invoices or otherwise clearly reflected in the books and records of the taxpayer. If not so separately stated, the gross income from such transactions is taxable.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R19-1-213
R19-1-214 | Repeal
Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 4-112(B)(1)(b)
Implementing statute: A.R.S. § 4-112(G)(6)
- 3. List of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 4015, September 12, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Special Investigator Wes Kuhl or David Williams
Address: 800 W. Washington Street, 5th Floor
Phoenix, AZ 85007
Telephone: (602) 542-9072 or (602) 542-9789
Fax: (602) 542-5707
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The agency is informing the public of the Department's revised rule on prohibited acts inside licensed establishments. The revisions comply with a United States District Court ruling that eliminates language from the previous rules that were found to be unconstitutional.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- 8. The preliminary summary of the economic, small business, and consumer impact:**

Notices of Proposed Rulemaking

The rule imposes a minimal economic impact on the agency in the rewriting of the rule. The rule imposes less of a burden than the previous rules because there are fewer restrictions and the rule is much clearer for the general public and the small business owners to understand. Unclear terms were removed to reduce interpretation problems, which will assist in the enforcement of this rule. The economic impact on other state agencies, such as the Office of the Secretary of State and the Governor's Regulatory Review Council, is expected to be minimal.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Special Investigator Wes Kuhl or David Williams
Address: 800 W. Washington St., 5th Floor
Phoenix, AZ 85007
Telephone: (602) 542-9072 or (602) 542-9789
Fax: (602) 542-5707

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where when and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the persons identified in item #4 within 30 days after publication of this notice. Written comments will be accepted at the above location until close of record.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any material incorporated by reference and its location in the rules:

None

13. The full text of the rule follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ARTICLE 2. DIRECTOR

Section

R19-1-213. ~~Clothing Requirements, Employees Repealed~~

R19-1-214. ~~Sex Acts Prohibited, Real or Simulated Prohibited Acts~~

ARTICLE 2. DIRECTOR

R19-1-213. ~~Clothing Requirements, Employees Repealed~~

~~A. No licensee shall, on the licensed premises:~~

- ~~1. Employ or use any person as an entertainer or in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the areola of the female breast or any portion of his or her pubic hair, anus, cleft of the buttocks, vulva, or genitals;~~
- ~~2. Employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in subsection (A)(1);~~
- ~~3. Encourage or permit any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals, of any other person; or~~
- ~~4. Permit any employee or person to wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion thereof.~~

~~B. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are severable.~~

R19-1-214. ~~Sex Acts Prohibited, Real or Simulated Prohibited Acts~~

~~No licensee shall permit, on the licensed premises, any person to perform acts of or acts which constitute or simulate:~~

- ~~1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;~~
- ~~2. The touching, caressing, or fondling of the breast, buttocks, anus, or genitals;~~
- ~~3. The displaying of any portion of the areola of the female breast, or any portion of his or her pubic hair, anus, vulva, or~~

Notices of Proposed Rulemaking

- genitals; or
4. ~~Any violation enumerated in A.R.S. Title 13, Chapter 14, Sexual Offenses, including the following sections:~~
 - a. ~~13-1402: indecent exposure; classifications;~~
 - b. ~~13-1403: public sexual indecency; public sexual indecency to a minor; classifications;~~
 - e. ~~13-1404: sexual abuse; classifications;~~
 - d. ~~13-1405: sexual conduct with a minor; classifications;~~
 - e. ~~13-1406: sexual assault; classification; increased punishment;~~
 - f. ~~13-1406.01: sexual assault of a spouse; definition, violation, classification;~~
 - g. ~~13-1410: molestation of child; classification;~~
 - h. ~~13-1411: crime against nature; classification;~~
 - i. ~~13-1412: lewd and lascivious acts; classifications;~~
 - A.** A licensee shall not permit, on the licensed premises, an employee or other person to:
 1. Expose any portion of his or her anus, vulva, or genitals;
 2. Grope, caress or fondle, or cause to be groped, caressed, or fondled the breasts, anus, vulva, or genitals of any other person with any part of the body;
 3. Perform acts of sexual intercourse, masturbation, sodomy, bestiality, or oral copulation.
 - B.** If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are severable.